UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. **8:19-CR-241 (NAM)**

MAXWELL GRIMARD,

Defendant.

APPEARANCES:

Grant C. Jaquith, United States Attorney
Douglas G. Collyer, Assistant United States Attorney
445 Broadway, Room 218
Albany, New York 12207
Attorneys for the Government

Lisa A. Peebles, Federal Public Defender
Gabrielle DiBella, Assistant Federal Public Defender
4 Clinton Square, 3rd Floor
Syracuse, New York 13202
Attorneys for the Defendant

Hon. Norman A. Mordue, Senior U.S. District Court Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Defendant Maxwell Grimard is charged in a two-count indictment with Felon in Possession of Ammunition and Felon in Possession of a Firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). (Dkt. No. 1). The Government alleges that, after being convicted of a crime punishable by imprisonment for a term exceeding one year, Defendant illegally possessed forty-one (41) Winchester 12-gauge shotgun rounds, two (2) .22 caliber rimfire rounds, and a Marlin Stainless Model 60 .22 caliber rifle. (*Id.*). Defendant now moves to suppress the physical evidence and certain statements he made, pursuant to Federal Rule of

Criminal Procedure 12(b). (Dkt. No. 11). The Government opposes the motion, (Dkt. No. 12), and Defendant has filed a reply, (Dkt. No. 13). An evidentiary hearing was held on October 16, 2019, where the Court heard testimony from several witnesses, but not Defendant. (*See* Dkt. No. 24, Hearing Transcript ("Tr.")). The parties have also submitted proposed findings of fact and conclusions of law. (Dkt. Nos. 25, 26).

II. BACKGROUND

At 11:45 p.m. on April 8, 2019, New York State Police ("NYSP") dispatched a call regarding a male subject at 10 Seneca Drive in Plattsburgh, New York who was threatening to kill himself. (Dkt. No. 11-2, p. 2). NYSP and the Clinton County Sheriff's Office responded to the call. (*Id.*, p. 3). According to Defendant's affidavit, he lived at 10 Seneca Drive from early 2017 to April 8, 2019, "with several other people, including Tamie Lowther who is the owner of the property." (Dkt. No. 11-2, p. 5).

When Sheriff's Deputy Ian Vanier and Sergeant ("Sgt.") Christopher Holland arrived at 10 Seneca Drive, they spoke with Lowther, who informed them that Defendant told her that he "[felt] like dying tonight" and then ingested a handful of Gabapentin and Aspirin before leaving the home on foot. (Dkt. No. 11-2, p. 3). Defendant claims that he took Gabapentin and LSD. (*Id.*, p. 5).

Lowther assisted the officers in contacting Defendant by phone, at which point Defendant informed them that he did not want to live anymore. (Dkt. No. 11-2, p. 3). Sgt. Holland convinced Defendant to meet to talk. (*Id.*). The two officers then located Defendant on a nearby street and took him into custody pursuant to Mental Hygiene Law Section 9.41. (*Id.*). Deputy Vanier noted that Defendant appeared "to be mentally disordered." (*Id.*).

The officers took Defendant to the University of Vermont Champlain Valley Physician's Hospital for an evaluation. (Dkt. No. 11-2, p. 3). At the hospital, Defendant was monitored for his alleged ingestion of Gabapentin and Aspirin. (*Id.*, p. 15). Nursing notes reflect that Defendant was agitated but he denied having any suicidal or homicidal ideation at the hospital. (*Id.*, p. 18).

During his hospital stay, Defendant made a series of incriminating statements to Sgt. Holland and Deputy Vanier. (Dkt. No. 12-4, pp. 4–6). According to Sgt. Holland's affidavit, Defendant said that:

> The State Police are mad at me because I have 63 guns registered to me, but they only found 3 . . . I'm not stupid.
>
> I still have access to all my guns, but I can't touch them because I'm on stupid felony probation.
>
> My computers are GPS secured so if the stupid state police tried to move them and all the hard drive disks, they would just split themselves in half. I have 11.2 terabytes of storage on the cloud.
>
> My friend was dumb, he had a pocket knife and 2 mini sticks of (TNT) dynamite in his pocket, so I told him "stupid go put those inside."
>
> I got to call Scot and let him know I found ammunition in my bedroom. I'm not supposed to have it because of this stupid felony probation. I have like 0 magnum loads of 12 gauge.
>
> You want armor? I'll trade you. I have level 4a Spartan armor it cost me like 11 grand. I can get you any kind of body armor you want. I have a bunch.
>
> I was trafficking weapons for years, making like 12 to 15 grand a month.

(*Id.*, pp. 5–6). Sgt. Holland also noted that Defendant referenced a blister on his thumb which he claimed was caused while he was making "Composition B," which he explained was a type of explosive. (*Id.*). The officers left Defendant at the ER when the hospital security staff arrived to monitor him. (Tr. 28).

According to Defendant's affidavit, "[d]ue to the substances I ingested I do not remember what happened at the hospital." (Dkt. No. 11-2, p. 5). He also states that he does not remember being advised of *Miranda* rights or signing a waiver. (*Id.*). The officers testified that, while at the hospital, Defendant was not confused, lethargic, or in an out of consciousness. (Tr. 32, 57). After the officers spoke with Defendant, he received from the hospital staff Haloperidol Lactate (an anti-psychotic medication) and Lorazepam (a sedative). (Dkt. No. 11-2, pp. 21–22) (Tr. 31–32).

The day after his hospitalization, the Clinton County Sheriff's Office contacted Defendant's probation officer ("P.O."), Scot Zmijewski. (Dkt. No. 11-2, p. 3). That same day, Defendant and Lowther met with P.O. Zmijewski, at which time Lowther informed Defendant that he was no longer welcome to live at her home. (Tr. 89–90). Defendant moved out on April 10, 2019, but he left some of his belongings in the bedroom. (Tr. 90–91). According to Defendant's affidavit, he met with Lowther on the morning of August 9, 2019 "so I could get my computer and some clothes." (Dkt. No. 11-2, p. 5). Defendant adds that Lowther advised him that the locks to the residence were changed on April 10, 2019. (*Id.*, p. 6).

Lowther testified that Defendant had lived at her home for several years, but he did not have a lease, and he was not paying rent in the months leading up to his arrest. (Tr. 94–95). Lowther also testified that, on April 10, 2019, she evicted Defendant and changed the locks. (Tr. 84). Further, she brought Defendant some of the possessions he left in the bedroom, and she told Defendant he could not come back to the room without her supervision. (Tr. 91). Defendant never returned to retrieve any other items. (Tr. 91). According to Defendant, after April 10, 2019, his girlfriend and her sister "had gone to 10 Seneca Street to collect some items

for me," and "I had to rely on other people to help me obtain the rest of my property that I did not intend to abandon." (Dkt. No. 13-1, ¶¶ 3–4).

On April 26, 2019, at 11:15 a.m., Sgt. Holland and P.O. Zmijewski went to Defendant's new residence at 14 Brinkerhoff Street in Plattsburg for a home visit. (Tr. 10–11). They searched the premises pursuant to the terms of his probation but found no contraband. (Tr. 11). Then, P.O. Zmijewski and officers from the Sheriff's Office went to search Defendant's former residence at 10 Seneca Drive. (Tr. 11). Lowther completed a written consent form allowing officers to search her home, including the bedroom where Defendant had lived before his eviction. (Dkt. No. 12-3).

In the course of searching Defendant's former bedroom, the officers opened a dresser drawer and observed shotgun shells. (Dkt. No. 11-2, p. 11). At that point, Sgt. Holland stopped the search in order to apply for a search warrant. (*Id.*). The search warrant application was presented to a Plattsburgh Town Justice, who signed it that same day. (Dkt. No. 12-4, pp. 2–3). During the search that followed, officers seized: shotgun shells, multiple empty ammunition boxes, a medicine bottle with a gray powder, a medicine bottle with a gray powder residue, rimfire rounds, starter blanks with yellow tips, and a Smith and Wesson Safety and Instruction Manual. (Dkt. No. 11-2, p. 11).

On May 7, 2019, Defendant was taken into custody for a violation of probation and on June 12, 2019, he was indicted on the two counts in this case. (Dkt. No. 1).

III. DISCUSSION

Defendant's motion seeks suppression of all physical evidence seized during the search at 10 Seneca Drive and the statements he made to the police on the night he was hospitalized. (*See generally* Dkt. No. 11-1). The Court will address each category of evidence in turn.

A. Physical Evidence

Defendant moves to suppress the physical evidence seized from 10 Seneca Drive on April 26, 2019, on the basis that the search "was not supported by the required probable cause," and that the search warrant affidavit "omitted material information" and otherwise "relied on facts that were stale." (Dkt. No. 11-1, pp. 7–12).

In response, the Government argues that Defendant lacks standing to challenge the search at 10 Seneca Drive because he: (1) no longer lived there at the time of the search; (2) did not have access to his former bedroom; (3) did not have a possessory interest in the premises; and (4) did not have the right to exclude others from the residence. (Dkt. No. 12, pp. 8–9). Alternatively, the Government argues that the search was also valid pursuant to: (1) the terms and conditions of Defendant's probation; (2) the consent of Lowther; and (3) the search warrant duly authorized by the Town Justice. (*Id.*, pp. 22–24). The Government adds that, even if the search warrant lacked probable cause, the "good faith exception" to the exclusionary rule applies because the officers reasonably relied on a warrant that they believed to be valid. (*Id.*, pp. 22–24). The Court agrees with the Government, for the reasons that follow.

1. Defendant's Standing

The Government argues that Defendant lacks standing to contest the search because he "no longer lived at 10 Seneca Drive after April 10, 2019," and further, "the search of 10 Seneca drive took place on April 26, 2019, sixteen days after the Defendant left the residence and the locks were changed." (Dkt. No. 12, pp. 8–9). Thus, the Government asserts that Defendant "did not have an objectively reasonable expectation of privacy" at the residence because he did not have a legal right to be there and could not "claim the right to exclude others." (*Id.*). In response, Defendant claims that he maintained a privacy interest in the searched bedroom even

after he moved out because he "did not voluntarily leave 10 Seneca Street" and he "manifested the intent to return to collect his belongings." (Dkt. No. 13, pp. 4–5).

The Fourth Amendment protects the right of private citizens to be free from unreasonable government intrusions into areas where they have a legitimate expectation of privacy. U.S. Const. amend. IV. A person's ability to assert a claim of unlawful entry under the Fourth Amendment depends on whether he "has a legitimate expectation of privacy in the invaded place." *Figueroa v. Mazza*, 825 F.3d 89, 108 (2d Cir. 2016) (quoting *Rakas v. Illinois*, 439 U.S. 128, 143 (1978)). "Though a person might subjectively expect privacy in a particular location, that 'subjective expectation of privacy is legitimate' only 'if it is one that society is prepared to recognize as reasonable.'" *Id*. (quoting *Minnesota v. Olson*, 495 U.S. 91, 95–96 (1990)). The defendant bears the burden of proving that his expectation of privacy was reasonable, *United States v. Osorio*, 949 F.2d 38, 40 (2d Cir. 1991), which he may do "by showing that he owned the premises or that he occupied them and had dominion and control over them by leave of the owner." *United States v. Villegas*, 899 F.2d 1324, 1333 (2d Cir. 1990). Notably, "[t]he absence of possession, [ ] may often result in a finding that an accused had no legitimate expectation of privacy because the absence of a right to exclude others from access is an important factor militating against a legitimate expectation of privacy." *United States v. Rahme*, 813 F.2d 31, 34 (2d Cir. 1987).

Here, the record shows that Defendant lived at Lowther's home for several years prior to his eviction on April 10, 2019. (*See* Dkt. No. 11-2, p. 11). Lowther testified that Defendant did not have a lease or any contract permitting him to live there. (Tr. 94–95). Defendant had been living at Lowther's home rent-free in the months leading up to his eviction. (Tr. 94). Lowther

evicted Defendant from her home on April 10th, and she changed the locks so Defendant could not return without supervision. ((Tr. 9–10, 84–85).

After he was evicted, Defendant established residence at 14 Brinkerhoff Street and informed P.O. Zmijewski of the same. (Tr. 10–11). The record shows that Defendant sent Lowther several online messages about his desire to pick up "my stuff" at 10 Seneca Drive, and Lowther told him that someone had to be at the house, and that "[y]ou're [sic] key won't work so don't bother trying to unlock the door," [a]nd the window to the room is locked." (Dkt. No. 13-1, pp. 4–8). Ultimately, Lowther delivered some of Defendant's belongings to him. (Tr. 91–92). Thereafter, Lowther did not hear from him again and he never returned to 10 Seneca Drive. (Tr. 92).

Based on this evidence, the Court finds that on April 26, 2019, Defendant did not have a reasonable expectation of privacy for his former bedroom at 10 Seneca Drive. While Defendant may have left some possessions there, he did not testify as to what those items might have been. More importantly, at the time of the search, there is no dispute that: (1) Defendant had been evicted from 10 Seneca Drive and established a new residence; (2) he was not paying rent and had no lease; and (3) he had no access to his former bedroom—since Lowther had changed the locks to the home, locked the bedroom window, and told Defendant that he could only come back under her supervision. Although Defendant argues that he maintained a privacy interest in his former bedroom and intended to return, he did not testify at the hearing to provide any such evidence. And his affidavit acknowledges that: (1) he lived at 10 Seneca Drive from early 2017 "until April 8, 2019"; (2) Lowther met with him on April 9, 2019 at 10 Seneca Drive so he could pick up his computer and some clothes; and (3) Lowther advised him that the locks were changed on April 10, 2019. (Dkt. No. 11-2, pp. 5–6). Defendant's second affidavit similarly

shows that he had no access to 10 Seneca Drive, and further, that he made no attempt to personally obtain any possessions there. (Dkt. No. 13-1, p. 2). Rather, Defendant states that he "could not go back to collect my belongings," and that he relied on others to do so. (*Id.*). And though Defendant claims that he did not intend to abandon the remaining items, more than two weeks passed between his eviction and the search in this case. Simply put, Defendant has not shown any expectation of privacy in his former bedroom at 10 Seneca Drive on April 26, 2019, much less a reasonable one.

Accordingly, the Court finds that Defendant lacks standing to challenge the search and his motion to suppress physical evidence seized from his former bedroom must be denied. *See United States v. Knepper*, 256 F. App'x 982, 984 (9th Cir. 2007) (finding that the defendant lacked standing to challenge a search of his former residence where the defendant had moved out and established residence elsewhere); *United States v. Sacco*, 436 F.2d 780, 784 (2d Cir. 1971) (finding that the defendant did not have standing to challenge the police search, where he had no legal interest in the premises, made no showing of access, and had no possessory interest in the seized contraband).

2. Legality of the Search

Moreover, even if Defendant did have standing to challenge the search, the Court finds that the seized evidence is also admissible because the officers had valid consent. The Government claims that Lowther, the owner of the residence at 10 Seneca Drive, provided valid written consent authorizing police to search her home. (Dkt. No. 12, pp. 13–14). In response, Defendant claims that Lowther could not consent to the search because she did not have "joint access to the property," and therefore could not consent to the search of "closed containers" in the room. (Dkt. No. 13, pp. 6–7).

The Fourth Amendment "does not forbid a warrantless search of private property pursuant to consent, voluntarily given, by the owner of the property." *United States v. Ojudun*, 915 F.3d 875, 883 (2d Cir. 2019) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973)). Thus, when a search is conducted pursuant to consent by an authorized party, "neither a warrant nor probable cause is necessary to justify the search; the government is simply required to prove by a preponderance of the evidence adequate authority to consent." *United States v. Lewis*, 386 F.3d 475, 481 (2d Cir. 2004) (citing *United States v. Matlock*, 415 U.S. 164, 171 (1974)). The Second Circuit has "refined the *Matlock* rule, holding that a third party has authority to consent to a search of a home when that person (1) has access to the area searched and (2) has either (a) common authority over the area, (b) a substantial interest in the area, or (c) permission to gain access to the area." *Moore v. Andreno*, 505 F.3d 203, 208–09 (2d Cir. 2007).

Here, Lowther completed a written consent form authorizing P.O. Zmijewski and Sgt. Holland to search her residence. (Dkt. No. 12-3). It is undisputed that Lowther was the sole owner of 10 Seneca Drive, where she lived with her daughter. (Tr. 93). Although Defendant argues that Lowther did not have joint access to the bedroom, the record shows that she had exclusive control over the premises at the time of the search. (Tr. 93–94). Again, it is undisputed that Defendant was evicted on April 10th and established a new residence elsewhere. At that time, Lowther changed the locks to the residence and locked the window in Defendant's former bedroom. Further, she informed Defendant that he could only return to obtain any remaining personal items under her supervision. (Tr. 91). Once again, Defendant presented no testimony about his interest in or access to the former bedroom, whereas his affidavit admits that he no longer lived there. (Dkt. No. 11-2, pp. 5-6). While Defendant claims that Lowther did not have authority over the dresser in his former bedroom (where the shotgun shells were found),

the undisputed testimony is that the dresser belonged to her and she still had items inside—even when Defendant lived there. (Tr. 87).

In sum, based on the undisputed facts, particularly the consent form signed by Lowther and her unrebutted testimony, the Court finds that Lowther had authority to consent to the full search of her home on April 26, 2019. For this reason as well, Defendant's motion to suppress physical evidence seized during the search is denied.[1] *See United States v. Venizelos*, 495 F. Supp. 1277, 1283–85 (S.D.N.Y. 1980) (finding that the owner of a home could consent to search of bedroom that had been occupied by nonpaying guest because "when the officers arrived at her home, [the homeowner] was in complete and exclusive control of her home").

B. Suppression of Statements

Next, Defendant seeks to suppress statements he made to the police at the hospital, on the basis that: (1) he did not receive *Miranda* warnings before the statements were made; and (2) he did not make the statements voluntarily. (Dkt. No. 11-1, pp. 15–17). Defendant claims he could not have provided the statements voluntarily because he had ingested substances that impaired his mental state. (Dkt. No. 13, pp. 11–13). In response, the Government asserts that, despite his ingestion of the substances, Defendant was never subject to custodial interrogation and that his statements were completely voluntary. (Dkt. No. 13, pp. 12–14). The Court will address each issue in turn.

[1] Having found that Defendant lacks standing to challenge the search, and moreover, that Officers obtained valid consent for the search from Lowther, the Court need not consider whether the search was also authorized by the terms of Defendant's probation or the search warrant obtained by law enforcement. Defendant's request for a *Franks* hearing is denied for this reason as well.

1. *Miranda* Warnings

Defendant argues that the officers should have given him *Miranda* warnings prior to his conversation with them at the hospital. (Dkt. No. 11-1, pp. 12–15). Defendant states that he does not remember the conversation or receiving *Miranda* warnings. (Dkt. No. 11-2, pp. 5–6). In response, the Government contends that *Miranda* warnings were not provided because Defendant was not subject to interrogation.[2] (Dkt. No. 12, pp. 24–25). The Government contends that Defendant, on his own, initiated a conversation with officers lasting approximately five minutes. (*Id*.). The Government claims that the officers' discussion with Defendant merely struck a "responsive chord," and that they never asked Defendant questions that were likely to elicit an incriminating response. (*Id*.).

In *Miranda v. Arizona*, the Supreme Court recognized that "without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." 384 U.S. 436, 467 (1966). "To combat this inherent compulsion, and thereby protect the Fifth Amendment privilege against self-incrimination, *Miranda* imposed on the police an obligation to follow certain procedures in their dealings with the accused." *Moran v. Burbine*, 475 U.S. 412, 420, 106 (1986). Now, when "a suspect is not provided with *Miranda* warnings, 'the prosecution is barred from using statements obtained during the interrogation to establish its case in chief.'" *Georgison v. Donelli*, 588 F.3d 145, 155 (2d Cir. 2009) (quoting *United States v. Newton*, 369 F.3d 659, 668 (2d Cir. 2004)).

[2] The parties do not dispute that Defendant was in custody at the time the statements were made. (*See* Dkt. No. 11-1, pp. 13–14; Dkt. No. 12, pp. 24–27).

However, *Miranda's* warning requirements "apply only to 'custodial interrogation.'" *Id*. (quoting *Newton*, 369 F.3d at 669). Therefore, to constitute "custodial interrogation," "there must be an interrogation of the defendant, and [ ] it must be while [the defendant] is in 'custody.'" *United States v. FNU LNU*, 653 F.3d 144, 148 (2d Cir. 2011). Without either, non-*Mirandized* statements are admissible. *United States v. Miller*, 382 F. Supp. 2d 350, 370 (N.D.N.Y. 2005) (citing *Thompson v. Keohane*, 516 U.S. 99, 102 (1995)). In this case, the dispute centers on interrogation, which occurs "when a suspect 'is subjected to either express questioning or its functional equivalent' and his statements are 'the product of words or actions on the part of the police' that 'were reasonably likely to elicit an incriminating response.'" *United States v. Familetti*, 878 F.3d 53, 60 (2d Cir. 2017) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980)).

After careful review of the evidence, the Court finds that Defendant was not subject to interrogation. Notably, Sgt. Holland testified that he took Defendant into custody and to the hospital pursuant to the Mental Hygiene Law—for Defendant's safety, not for a suspected crime. (Tr. 25). When they arrived at the hospital, Defendant was escorted to an exam room and his handcuffs were quickly removed. (Tr. 29–30). Then the officers waited with Defendant for ten to twelve minutes before hospital security arrived. (Tr. 38). They waited in and around the door to the exam room but did not block the doorway. (Tr. 39).

Sgt. Holland testified that Defendant initiated conversation with the officers when Defendant requested a Band-Aid for an injury on his finger, which Defendant claimed to have received when he was making "Composition B." (Tr. 26, 41). According to Sgt. Holland, Defendant then went on to make a series of rapid statements, which the officers later reduced to writing. (Tr. 26; *see also* Dkt. No. 12-2). Sgt. Holland recalled that Defendant spoke in a

"very fast-moving fashion, nonstop, wasn't really taking a lot of downtime between the statements." (Tr. 26). Sgt. Holland estimated that the entire conversation lasted only four to six minutes, after which Defendant was left in the care of the hospital staff. (Tr. 27-28). Deputy Vanier testified to the same sequence of events. (*See* Tr. 46–59). Deputy Vanier recalled that Defendant was generally cooperative and did not exhibit any "agitated behavior or anything [ ] extreme." (Tr. 54). Deputy Vanier confirmed that the officers never raised their voices and never drew or displayed their weapons. (Tr. 57).

Because Defendant does not recall this exchange, the officers' version of events stands undisputed. Based on this evidence, there is no indication that Defendant was subject to any questioning that was likely to elicit an incriminating response. Rather, the testimony of the officers shows that Defendant started the conversation with his unprompted statements and the officers simply responded to his statements and questions. The record shows that Sgt. Holland's question about "Composition B" was intended only to identify source of the injury on Defendant's hand. Indeed, Sgt. Holland testified that he asked Defendant about it because he "had no idea what Composition B was," not because he thought it was suspicious. (Tr. 26). Moreover, any injury to Defendant was relevant to whether Defendant posed a danger to himself, one of the concerns of the Mental Hygiene Law. Thus, Sgt. Holland's question about Composition B was not likely to elicit an incriminating response.

Similarly, Sgt. Holland's inquiry about Defendant's probation status was consistent with questions officers routinely ask to comply with their reporting requirements to the probation office. (Tr. 97). Such a routine question concerning "pedigree information" that is "requested for record-keeping purposes only [ ] fall[s] outside the protections of *Miranda* and the answers thereto need not be suppressed." *United States v. Pabon*, 603 F. Supp. 2d 406, 410

(N.D.N.Y. 2009) ("Permissible questions are those that 'appear reasonably related to the police's administrative concerns.'") (quoting *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990)). Nor is there evidence that Defendant was subject to any behavior by law enforcement that could be viewed as intimidating or coercive. Rather, the officers escorted Defendant to the hospital for his own safety and waited for hospital security to take over.

In sum, based on the evidence, particularly the undisputed testimony of the officers, the Court finds that Defendant was not subject to interrogation. Therefore, he was not entitled to receive *Miranda* warnings, and suppression of his statements is not warranted on this basis. *See United States v. Bethea*, 191 F. Supp. 3d 249, 259–60 (S.D.N.Y. 2016) (holding that an officer's "isolated and unremarkable factual observation" was a "matter-of-fact communication" that was unlikely to elicit an incriminating response).

2. Voluntariness

Finally, Defendant asserts that the Court should exclude evidence of his statements because they were not voluntary, due to his substance ingestion and mental state at the time. (Dkt No. 11-1, pp. 15–17). The Government argues that Defendant's statements were made while he "was lucid and articulate in what he was saying, and thus was not so impaired as to interfere with his ability to understand." (Dkt. No. 12, pp. 25–27).

It is well-settled that "[v]olunteered statements of any kind are not barred by the Fifth Amendment." *Miranda v. Arizona*, 384 U.S. 436, 478 (1966). Indeed, any statement given freely and voluntarily without coercion is admissible. *Innis*, 446 U.S. at 301. Thus, "[t]he central question in assessing whether a confession was given voluntarily is whether the defendant's 'will was overborne' at the time of the confession." *United States v. Corbett*, 750 F.3d 245, 253 (2d Cir. 2014) (citing *United States v. Plugh*, 648 F.3d 118, 128 (2d Cir. 2011));

see also United States v. Taylor, 745 F.3d 15, 23 (2d Cir. 2014) ("A confession is not voluntary when obtained under circumstances that overbear the defendant's will at the time it is given.") (quoting *United States v. Anderson*, 929 F.2d 96, 99 (2d Cir. 1991)). In making that assessment, courts examine "the totality of all the surrounding circumstances, including the accused's characteristics, the conditions of interrogation, and the conduct of law enforcement officials." *Taylor*, 745 F.3d at 23–24 (quoting *Anderson*, 929 F.2d at 99).

Here, the undisputed evidence shows that Defendant was coherent and alert during his conversation with the officers at the hospital, despite his ingestion of several medications. Notably, Sgt. Holland and Deputy Vanier credibly testified that Defendant was not confused, lethargic, or in an out of consciousness. (Tr. 32, 57). Further, they had no reason to believe that Defendant was unaware or unable to understand what was happening. (Tr. 32–33, 57). Sgt. Holland also testified that Defendant did not receive any additional medication prior to making the challenged statements. (Tr. 31–32). There is no evidence that Defendant asked for an attorney, or for the officers to leave the room.

Similarly, Kenneth Todd, Defendant's attending nurse on the night of the incident, testified that Defendant knew where he was, was not lethargic, was not in and out of consciousness, and was not confused. (Tr. 68–69). Todd's treatment notes from the night of the incident indicate that Defendant was "Oriented to Person Place and Time," and Defendant's "Level of Consciousness" was "Alert." (Dkt. No. 11-2, p. 15). Todd testified that Defendant was agitated and aggressive, the opposite of what he suspected might be result of a patient experiencing a Gabapentin overdose. (*See* Tr. 61–62, 69). Todd further testified that it was normal for officers to remain in the exam room with patients under these circumstances because "some patients come in rather combative," and the presence of officers "tends to ease

the process and [ ] it's there for our safety mostly." (Tr. 65). Todd stated that Defendant was "talking a lot" and "very verbal with the officers," but Todd could not recall "the specific substance of the statements." (Tr. 70).

On this record, the Court finds that Defendant's statements were voluntary. Although Defendant states in his affidavit that he does not remember any conversation at the hospital, the Court credits the testimony of the officers and the attending nurse that Defendant was conscious the whole time. Furthermore, while Defendant appeared "to be mentally disordered" upon his apprehension, the officers and the attending nurse testified that he was alert, aware, and communicative at the hospital. Based on this evidence, despite Defendant's alleged overdose, he retained the mental capacity to make a knowing and voluntary decision to speak with the officers. In other words, the effects of whatever substances Defendant ingested did not overbear his will. Nor did the behavior of the officers; there is no evidence of police coercion, as discussed above. Accordingly, Defendant's voluntary statements are not subject to suppression. *See United States v. Simmons*, 351 F. Supp. 3d 214, 221–22 (E.D.N.Y. 2018) (denying the defendant's motion to suppress statements where the defendant initiated the conversation and was not otherwise prompted by officers to provide incriminating statements).

IV. CONCLUSION

For these reasons, it is

ORDERED that Defendant's motion to suppress (Dkt. No. 11) is **DENIED**.

IT IS SO ORDERED.

Dated: December 4, 2019
Syracuse, New York

Norman A. Mordue
Senior U.S. District Judge